

U.S. Ser. No. 09/955,253
Applicants: Kreutz et al.

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REMARKS

Claims 50-60 and 74-80 are presented. Claims 50, 52 and 55 are independent. The present claims are supported by the embodiments and disclosure relating to Figs. 1-9.

Allowable Subject Matter:

The allowance of claims 52, 55-57, 74 and 75 is noted with appreciation. The word "characterized" has been replaced with "wherein" throughout, consistent with practice common in the US PTO.

Previous independent claims 53 and 58 have been re-written in their previous dependent form from claim 50. The claim 76 asserted to be redundant is no longer duplicative of claim 74, in light of the amendment to claim 53.

Telephone Conferences:

Examiner is thanked for the courtesy extended the undersigned of the telephone conferences of July 19, 2004 and of August 16, 2004 to discuss possible claim amendments. At the July 19th conference, the coordinate system in the graphic sketch enclosed in the Office Action of Feb. 23, 2004 was discussed for clarification as to how Examiner proposed reading it on the claims, and a possible approach to an amendment discussed regarding claim language in general terms to indicate that the free distal ends do not contact the carrier, but which suggestion was met with Examiner's observation that the "free distal end" could be considered connected via its proximal end to the carrier.

At the telephone conference of August 16, claim language was proposed to insert into claim 50 in its fifth paragraph that would specify as to the flexible protrusions "wherein a height dimension of the protrusions along a direction extending from the proximal end away from carrier towards the distal end exceeds a width dimension of the protrusion transverse the carrier adjacent the proximal end". It was explained that this related to the advantage that the massaging action be more defined rather than diffuse contact as in a Garenfeld grille. Furthermore a further claim dependent thereon was proposed to state "wherein the height dimension exceeds the width dimension as seen in both

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orthogonal directions generally perpendicular the height dimension transverse the carrier adjacent the proximal end". It was pointed out that considering Garenfeld or Schneider Figs. 1-2, there was no showing or suggestion that the height of what was alleged analogous to the protrusion exceeds the width dimension as seen in either of Fig. 1 (elevational view) or Fig. 2 (top view). Examiner appeared to respond favorably as relative to the prior art but raised the issue of whether the feature, seen in Figure 8 of the application, was particularly identified in the text, which would have to be considered further.

Then, instead, alternate claim language was discussed that would introduce the term hair-grasping elements to the depilation member (in paragraph 2), and then in para. 5 that the flexible protrusions are "spaced adjacent the hair-grasping elements so that the hair-grasping elements are exposed to the hairs unobstructed by the flexible protrusions" with the remainder of that paragraph being deleted. Examiner responded favorably to the goal intended to be expressed, but questioned whether "unobstructed" was precise enough since in Garenfeld the hair enters through the grille to be plucked by the rollers. It was then agreed that alternate language chosen to express that in use the flexible protrusions are not between the hair-grasping elements and the skin would be favorably viewed by Examiner. The Examiner also suggested using claim language to construct an axis from the hair-grasping elements to the skin being epilated to state that in use the flexible protrusions are not between the skin and the hair-grasping elements, and Applicants have followed this approach in the present amendment. Examiner indicated appreciation of the fact that this aspect of the claimed invention functioned differently from the Garenfeld or Schneider reference, whose grille is between the skin and the plucker rollers, reference being made to Garenfeld US Pat '499 at col. 2, lines 34-36.

Claims 50, 51, 53 and 58 rejected under §102(b) on Garenfeld EP 493 849 A1:

Claims 50, 51, 53 and 58 were rejected under §102(b) on either of Garenfeld EP 493 849 or Schneider US Pat. 5,041,122 since the Examiner asserted that the claim feature "protrusions" is met by the longitudinal sections between adjacent openings in plate 15.

Claim 50 is amended to recite that as seen along an axis extending outward from the depilation apparatus, through the hair-grasping elements positioned in hair-gripping relation opposite the skin, and to the skin being epilated, no portion of the flexible protrusions is disposed between the hair-grasping elements and said skin being epilated. An advantage of amended claim

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50 is seen in that the hair-grasping elements can get closer to more efficiently pluck even shorter hairs, as shown by the figures in Fig. 8 and Figs. 1-2 and accompanying description.

Dependent claims 78-80 introduce further advantageous features. Claim 78 recites that the flexible protrusions are adjacent the hair-grasping elements so that the hair-grasping elements in use are able to contact the skin. This allows for closer epilation. Claim 79 recites that the height of the flexible protrusion exceeds its width, which provides for more defined regions of contact for pain management. Claim 80 recites that the height exceeds its width in both directions perpendicular to the height. These are shown in Figs. 1-2 and 8.

Garenfeld teaches a flat screen plate covering the depilation rollers and placed on the skin, as stated in col. 2, ln. 15, and a housing that vibrates while the screen remains in continuous contact with the skin. In use, the screen plate (which Examiner contends is analogous to the flexible protrusions) is always between the skin being epilated and the pinchers that are opposite the skin, with the disadvantage that it sacrifices closeness of epilation --since shorter hairs are blocked from being grasped-- in order to provide the pain-masking massage comfort. As was pointed out to Examiner in the phone conference, as stated in the EP '849 at col. 2, lines 1-3 (or the equivalent Garenfeld US '499 at col. 2, ln. 35-37) Garenfeld expressly states this his screen plate prevents the skin from getting between the rollers 5, 6.

As this epilator/flat screen plate is pressed against the skin, hairs are ironed down and bent over rather than being grasped and plucked by the rollers, since the user always has to push the screen into continuous contact with the skin for the rollers 5,6 to have any chance at all to grasp hair. Inside housing 1 there is a first depilation member 3 consisting of counter-rotating rollers 5,6 and a second depilation member 4 having a second set of counter-rotating rollers 5,6. The screen plate 15 is pivotally mounted and has hair passage openings therethrough which prevent skin from being gripped by the rollers of the depilation member.

The provision of flexible protrusions to the Garenfeld screen would interfere with the intended operation of Garenfeld since they would space the hair-plucking rollers of Garenfeld even further from the skin. It is again noted that there is no teaching or suggestion in Garenfeld that his screen plate is other than rigid; were it to be flexible, it would either deflect and cause fewer hairs to pass through into the rollers, or cause skin to enter and be pinched (and thus also no motivation

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to make it of resilient plastic as Examiner argued at page 4). Applicants respectfully disagree with Examiner's contention in the Office Action at page 5, referring to Applicants' previously submitted arguments, that his explication of Garenfeld makes any meaningful distinction between "placing flexible protrusions on the plate" rather than "that the plate itself includes flexible protrusions", and that Examiner's view of Garenfeld is contrary to the tenor of the Decision of the Board of Appeals (see page 4 therein) in the prosecution of the Caric '182 patent that was submitted in the previous Response.

The §102 rejection under the Schneider '122 reference is respectfully traversed. Schneider is irrelevant to the present application, and clearly less relevant than Garenfeld. While Garenfeld has a kind of vibration apparatus, that is absent in Schneider, which has no vibration member. Grille 11 (called a "shear plate") is static and fixed, unlike the pivotally reciprocated grille 15 of the subsequent Garenfeld reference (indeed, Garenfeld '499 was deemed a patentable invention over the prior art Schneider '122). It is also pointed out that the grille 11 portion itself in Schneider is the same as grille 15 portion of Garenfeld in its construction, thus the Schneider grille is also positioned between the pincher rollers and the skin to prevent skin contact, as he expressly states at col. 2, lines 56-59. It is considered erroneous that the excerpted Fig. 1 appearing at page 3 of the Office Action was taken from Schneider; it would have been arguably appropriate to Examiner's purpose to have excerpted Fig. 1 of Garenfeld, and the rejection has been so understood and argued. It is respectfully submitted that a rejection under Schneider be withdrawn.

Since amended claim 50 is believed allowable, its dependent claims are likewise allowable.

Since there were no other rejections, the claims are believed allowable and in condition for allowance. If Examiner would make any further objections, then prior to issuance of a further official action, it is respectfully requested that Examiner telephone the undersigned, who will endeavor to work with Examiner to resolve any outstanding issues in a phone conference.

If a telephone conference would helpfully advance prosecution, the Examiner is invited to

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telephone the undersigned at 617-421-7939 between 6 a.m. and 12 noon. Please apply any charges or credits to Deposit Account No. 07-1350.

Respectfully submitted,

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